



4312-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-CURE-13810; 122PPIMCURES1,PPMPSPD1Z.YM0000]

RIN 1024-AD76

Special Regulations, Areas of the National Park System, Curecanti National Recreation Area, Snowmobiles and Off-Road Motor Vehicles

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends the special regulations for Curecanti National Recreation Area, Colorado, to designate routes, water surfaces, and areas where snowmobiles or motor vehicles may be used off park roads.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Background

History of Curecanti National Recreation Area.

The Blue Mesa Dam and Reservoir, Morrow Point Dam and Reservoir, and Crystal Dam and Reservoir make up the Curecanti Unit, one of the four main units authorized by the Colorado

River Storage Project Act of April 11, 1956 (Public Law 84-485) (CRSPA). The Curecanti Unit is also known as the Wayne N. Aspinall Storage Unit.

Section 8 of CRSPA directed the Secretary of the Interior (Secretary) “to investigate, plan, construct, operate, and maintain (1) public recreational facilities on lands withdrawn or acquired for the development of [the Colorado River Storage Project] to conserve the scenery, the natural, historic, and archeological objects, and the wildlife on said lands, and to provide for public use and enjoyment of the same and of the water areas created by these projects by such means as are consistent with the primary purposes of said projects”

Pursuant to that provision, the National Park Service (NPS) began managing natural and cultural resources and recreational uses within the Aspinall Storage Unit and established the Curecanti National Recreation Area (CURE or recreation area) in 1965 under a Memorandum of Agreement (MOA) with the Bureau of Reclamation. In 1978, Bureau of Reclamation lands in the East Portal area were added to CURE and placed under the management authority of the NPS pursuant to the MOA.

NPS Authority and Jurisdiction.

The NPS manages CURE under the NPS Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*), which gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. The Organic Act authorizes the Secretary to “make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks.”

The purpose of the recreation area, as provided for in the MOA, is to conserve its scenery, natural and cultural resources, and wildlife, and to manage its lands, waters, fish, wildlife, and recreational activities consistent with section 8 of CRSPA and the Federal Water Project Recreation Act (16 U.S.C 460l-12; P.L.89-72, July 9, 1965, as amended).

Description and Significance of CURE.

CURE is located in Gunnison and Montrose Counties in southwestern Colorado. The reservoirs and the surrounding lands provide recreational opportunities amidst a variety of natural, cultural, and scenic resources, including recently discovered dinosaur fossils, a 5,000-acre archeological district, and traces of 6,000 year-old dwellings. Approximately one million people visit CURE annually to take advantage of numerous recreational opportunities. Most visitors come during the summer months when temperatures are warmer and water-based activities are more popular.

The recreation area contains water resources, including three reservoirs that provide a variety of recreational opportunities in a spectacular geological setting. Blue Mesa Reservoir is one of the largest high-altitude bodies of water in the United States. It provides exciting and diverse water recreation opportunities for windsurfers, sail boaters, and water skiers.

Motor Vehicle and Snowmobile Use at CURE.

Visitors to CURE use motor vehicles to access campsites, fishing spots, marinas, trailheads, and other destinations throughout the recreation area, both on and off roads. Motor vehicle access is also an important means for disabled or mobility impaired visitors to experience the recreation area.

Motor vehicles have traditionally been used to access certain sites within the recreation area, including areas below the high-water mark of Blue Mesa Reservoir. The high-water mark is defined as the point at which the reservoir is at maximum capacity (full pool), an elevation of 7,519 feet. NPS policy at the recreation area has been to allow the operation of motor vehicles between the high-water mark and the water surface of Blue Mesa Reservoir for the purpose of fishing access and boat launching. In addition, the NPS has established several access roads that

service power lines as roads open for motor vehicle access. Access to areas below the high-water mark is primarily from maintained roads. However, unmaintained routes off established roads also provide access for travel below the high-water mark in a few areas. The most common motor vehicles that access these areas are cars and trucks. During the winter months, snowmobiles are used to reach popular fishing locations on the frozen surface of Blue Mesa Reservoir. Snowmobiles access the frozen surface from designated access points.

Off-Road Motor Vehicle and Snowmobile Regulation.

Executive Order 11644, Use of Off-Road Vehicles on the Public Lands, issued in 1972 and amended by Executive Order 11989 in 1977, required federal agencies to issue regulations designating specific areas and routes on public lands where the use of off-road vehicles may be used. The NPS has implemented these Executive Orders in 36 CFR 2.18 and 4.10.

Under 36 CFR 4.10, the use of motor vehicles off established roads is prohibited unless routes and areas are designated for off-road motor vehicle use by a special regulation. Under 36 CFR 4.10(b), such routes and areas “may be designated only in national recreation areas, national seashores, national lakeshores and national preserves.” Similarly, under 36 CFR 2.18, the use of snowmobiles is prohibited except on routes and water surfaces used by motor vehicles or motorboats during other seasons. Under 36 CFR 2.18(b), routes and water surfaces must be designated for snowmobile use by special regulation.

The NPS is issuing this rule to designate routes, water surfaces, and areas where motor vehicles and snowmobiles may be used off park roads, in compliance with 36 CFR 2.18 and 4.10 and Executive Orders 11644 and 11989.

Motorized Vehicle Access Plan/Environmental Assessment.

This rule implements the preferred alternative (Alternative C) for CURE described in the October 2010 Motor Vehicle Access Plan/Environmental Assessment (EA). The EA was open for public review and comment from November 17, 2010 until January 15, 2011. CURE completed a Finding of No Significant Impact (FONSI) on July 10, 2012, which selected for implementation the preferred alternative (Alternative C). The EA and FONSI are available for review at <http://parkplanning.nps.gov/cure> by clicking the link entitled “Motorized Access Plan/Environmental Assessment” and then clicking the link entitled “Document List.” An analysis of potential costs and benefits of this rule is available for review in the report entitled “Summary of Economic Analyses” found at <http://parkplanning.nps.gov/cure> then clicking the link entitled “Motorized Access Plan / Environmental Assessment” and then clicking the link entitled “Document List.”

Proposed Rule and Public Comment Period.

The NPS published the proposed rule on May 9, 2013, (78 FR 27132) with request for public comment through the Federal eRulemaking portal at [regulations.gov](http://www.regulations.gov), or by mail or hand delivery. The 60-day comment period ended on July 8, 2013. No comments were received. There are no changes from the proposed rule in the final rule other than a few minor, non-substantive edits. The final rule revises the section heading for §7.51 from “Curecanti Recreation Area” to “Curecanti National Recreation Area,” which is the actual name of the recreation area.

Final Rule.

This rule amends the special regulations for CURE at 36 CFR 7.51 to implement the selected action in the FONSI. The rule designates frozen water surfaces where snowmobiles may be used, designates new access points, and designates routes from the access points to the frozen surface of the Blue Mesa Reservoir. The rule also designates routes and areas where motor

vehicles may be used off park roads within the recreation area, and access routes at various locations throughout the recreation area.

Snowmobiles.

This rule amends section 7.51(c) to modify the designated access routes and frozen water surface where snowmobiles may be used. Snowmobiles may continue to operate on designated routes and areas within the boundaries of CURE provided their use conforms to the regulations governing the use of snowmobiles in 36 CFR 2.18 and applicable State laws. The rule retains the frozen surface of Blue Mesa Reservoir as a designated area for snowmobile use and designates specific access points and access routes to the reservoir. Routes are designated for travel by snowmobiles from the access points to the frozen surface of Blue Mesa Reservoir. These access routes are limited to the most direct route from the access points to the frozen surface. Traveling parallel to the reservoir, before accessing the frozen surface, is prohibited. Routes may be marked where possible, but changing weather conditions and terrain often make posting routes difficult. The rule also creates three new snowmobile access points: one at the Lake Fork Visitor Center boat ramp; one on the southeast shore of Iola Basin near Willow Creek; and one near McIntyre Gulch. The new access points will reduce environmental impacts by shortening the distance some visitors travel over the frozen surface by snowmobile to fish. A map of the water surfaces and routes open to snowmobile use and designated access points will be available in the office of the Superintendent, at the Elk Creek Visitor Center, at the Lake Fork Visitor Center, at the Cimarron Visitor Center, and on the recreation area's website.

Snowmobile gross weight continues to be limited to a maximum of 1,200 pounds (including cargo but excluding the weight of the driver and any passenger). The snowmobile speed limit remains 45 mph (36 CFR 2.18(d)(4)).

Off Road Vehicles.

The final rule adds paragraph 7.51(e) to designate three groups of routes and areas where motor vehicles may be used off park roads in the recreation area. First, the frozen surface of Blue Mesa Reservoir is designated for use by motor vehicles, in addition to snowmobiles. Second, the exposed lake bottom of Blue Mesa Reservoir is a designated area for motor vehicle use. This designated area between the high water mark and the actual water level of the reservoir is limited to a maximum area of approximately 958 acres. Third, approximately 24 miles of off-road routes are designated open to public motor vehicle use. These designated routes provide access to Blue Mesa Reservoir, other CURE lands, and to adjacent public lands. A map of routes and areas open to off-road motor vehicle use will be available in the office of the Superintendent, at the Elk Creek Visitor Center, at the Lake Fork Visitor Center, at the Cimarron Visitor Center, and on the recreation area's website. Under 36 CFR 1.4, the term "motor vehicle" does not include snowmobiles. As a result, paragraph 7.51(e) does not apply to snowmobiles.

The provisions of 36 CFR Part 4, including state law adopted by 36 CFR 4.1, apply within the recreation area. Unless posted otherwise, the speed limit is 15 mph for motor vehicles on all designated off-road routes and areas. Speed limits are implemented for visitor safety and to prohibit driving that may damage resources. The 45 mph speed limit for snowmobiles is higher than the 15 mph speed limit for motor vehicles, even though both will be allowed to travel on the frozen surface of Blue Mesa Reservoir, because snowmobiles are more easily controlled on snow and ice due to vehicle design and a lower center of gravity. As a result, there are less safety and resource concerns with driving snowmobiles in excess of 15 mph. Motor vehicle gross weight is limited to a maximum of 1,800 pounds (including cargo but excluding the driver and any passenger) on the frozen surface of Blue Mesa Reservoir. This vehicle restriction is intended to

allow only lightweight all-terrain vehicles (ATV) or utility task vehicles (UTV or sometimes referred to as a side-by-side) onto the frozen surface.

To prevent impacts to areas outside of existing routes, wheelbase width for motor vehicles on all designated routes may not exceed 8 feet, 6 inches. The NPS may also recommend, but will not require, four-wheel drive and/or high-clearance vehicles on particular routes, based on visitor safety and route conditions.

Superintendent's Authority.

Routes, water surface, areas, or access points designated for snowmobile, personal watercraft, or off-road motor vehicle use will be subject to year-round, seasonal, or temporary site-specific closures, conditions, or restrictions with public notice provided under 36 CFR 1.7. The Superintendent's authority in § 7.51(d)(5), related to personal watercraft use, is removed because it is redundant with the Superintendent's authority in paragraph (e) of this rule.

Compliance With Other Laws, Executive Orders and Department Policy.

Use of Off-Road Vehicles on the Public Lands (Executive Orders 11644 and 11989).

Section 3(a)(4) of Executive Order 11644 provides that off-road vehicle (ORV) “[a]reas and trails shall be located in areas of the National Park system, Natural Areas, or National Wildlife Refuges and Game Ranges only if the respective agency head determines that off-road vehicle use in such locations will not adversely affect their natural, aesthetic, or scenic values.” Since the Executive Order clearly was not intended to prohibit all ORV use everywhere in these units, the term “adversely affect” does not have the same meaning as the somewhat similar terms “adverse impact” and “adverse effect” used in NEPA. In analyses under NEPA, a procedural statute that provides for the study of environmental impacts, the term “adverse effect” includes minor or negligible effects. Section 3(a)(4) of the Executive Order, by contrast, concerns

substantive management decisions and must be read in the context of the authorities applicable to such decisions. CURE is an area of the National Park System. Therefore, the NPS interprets the Executive Order term “adversely affect” consistent with NPS Management Policies (2006). Those policies require that the NPS only allow “appropriate use” of parks and avoid “unacceptable impacts.”

This rule is consistent with those requirements. It will not impede attainment of CURE’s desired future conditions for natural and cultural resources as identified in the EA. The NPS has determined that this rule will not unreasonably interfere with the atmosphere of peace and tranquility or the natural soundscape maintained in natural locations within CURE. Therefore, within the context of the resources and values of CURE, motor vehicle use on the routes and areas designated by this rule (which are also subject to resource closures and other species management measures that would be implemented under the preferred alternative in the EA) will not cause an unacceptable impact to the natural, aesthetic, or scenic values of CURE.

Section 8(a) of the Executive Order requires agency heads to monitor the effects of ORV use on lands under their jurisdictions. On the basis of information gathered, agency heads shall from time to time amend or rescind designations of areas or other actions as necessary to further the policy of the Executive Order. The preferred alternative (Alternative C) for the EA identifies monitoring and resource protection procedures and periodic review to provide for the ongoing and future evaluation of impacts of motor vehicle use on protected resources. The Superintendent has the existing authority under both this final rule and 36 CFR 1.5 to close portions of CURE as needed to protect recreational area resources.

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This certification is based on the regulatory flexibility analysis found in the report entitled “Summary of Economic Analyses” that may be reviewed on the recreation area’s planning website at <http://parkplanning.nps.gov/cure>, then clicking the link entitled “Motorized Access Plan/Environmental Assessment” and then clicking the link entitled “Document List.”

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not affect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of NPS administered lands and waters. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Recreation area staff consulted with representatives from the Southern Ute Indian tribe, Uintah and Ouray Tribal Business Committee, Ute tribe of the Uintah and Ouray Reservation, and the Ute Mountain Ute tribe. The tribes have not commented or identified any concerns to date.

Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*).

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the PRA is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA).

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required because we reached the FONSI. The EA and FONSI are available for review at <http://parkplanning.nps.gov/cure> then

clicking the link entitled “Motorized Access Plan/Environmental Assessment” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under 36 U.S.C. 501-511, D.C. Code 10-137 (2001) and D.C. Code 50-2201.07 (2001).

2. Amend § 7.51 by revising the section heading and the introductory text of paragraph (c), revising paragraphs (c)(2) and (c)(3), adding paragraph (c)(4), removing paragraph (d)(5), and adding paragraphs (e) and (f). The revisions and additions read as follows:

§ 7.51 Curecanti National Recreation Area.

* * * * *

(c) *Snowmobiles*. Operating a snowmobile is allowed within the boundaries of Curecanti National Recreation Area under the following conditions:

* * *

(2) *Designated water surface and routes*. Snowmobile use is confined to the following water surface and routes:

(i) The frozen surface of Blue Mesa Reservoir; and

(ii) Lake Fork Visitor Center access point, McIntyre Gulch access point, Sapinero Beach access point, Dillon Pinnacles access point, Windsurf Beach access point, Elk Creek Marina, Dry Creek access point, North Willow access point, Old Stevens access point, Iola access point, Willow Creek access point, and the most direct route from each of these access points to the frozen surface of Blue Mesa Reservoir.

(3) *Identification of designated water surface and routes.* The designated water surface and routes are identified on maps available at the office of the Superintendent, Elk Creek Visitor Center, Lake Fork Visitor Center, Cimarron Visitor Center, and on the recreation area website.

(4) *Snowmobile requirements.* Snowmobiles are limited to a maximum of 1200 pounds gross vehicle weight (GVW), including cargo but excluding the weight of the driver and any passenger.

* * * * *

(e) *Off-road motor vehicle use.* Operating a motor vehicle is allowed within the boundaries of Curecanti National Recreation Area off park roads under the following conditions:

(1) *Designated routes and areas.* Motor vehicle use off park roads is confined to the following routes and areas:

(i) Via the access points and routes listed in paragraph (c)(2)(ii) of this section, directly to the frozen surface of Blue Mesa Reservoir;

(ii) A maximum area of approximately 958 acres of the exposed lake bottom of Blue Mesa Reservoir between the high-water mark and the water of the reservoir; and

(iii) Posted designated access routes through the recreation area described and selected in the Curecanti Motor Vehicle Access Plan/Finding of No Significant Impact dated July 10, 2012.

(2) *Identification of designated routes and areas.* These routes and areas are identified on Maps 6a and 6b, dated January 1, 2011, which are available at the office of the Superintendent,

Elk Creek Visitor Center, Lake Fork Visitor Center, Cimarron Visitor Center, and on the recreation area website.

(3) *Vehicle requirements.* Motor vehicles operating off park roads must meet the following requirements:

(i) Wheelbase width must not exceed 8 feet, 6 inches.

(ii) Maximum gross vehicle weight for motor vehicle use on the frozen surface of Blue Mesa Reservoir is 1800 pounds GVW, including cargo but excluding the weight of the driver and any passenger. This restricts vehicle use on the frozen surface to all-terrain and utility task type vehicles.

(4) *Speed limits.* Unless otherwise posted, motor vehicles may not exceed 15 miles per hour on designated off-road routes and areas.

(f) *Superintendent's authority.* The Superintendent may open or close designated routes, water surfaces, access points, or areas open to snowmobile, PWC, or off-road motor vehicle use, or portions thereof, or impose conditions or restrictions for snowmobile, PWC, or off-road motor vehicle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(1) The Superintendent will provide public notice of all such actions through one or more of the methods listed in §1.7 of this chapter.

(2) Violating a closure, condition or restriction is prohibited.

Rachel Jacobson
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

November 20, 2013.
Date

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